IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

CRL.A.No. 264 of 2003()

SC.240/2002 of 2002 OF ADDITIONAL SESSSIONS COURT
(AD HOC-II), ERNAKULAM

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APPELLANT: ACCUSED

RAJI @ KUMARAN S/O. APPU,
MANAKKATHAZHATH VEEDU, AAKKAPPANOMKARA,
AMBALOOR VILLAGE.

BY ADVS. SRI.M.RATNA SINGH (SR.)
SRI.P.K.ANIL

RESPONDENTS: COMPLAINANT & STATE
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1. THE SUB INSPECTOR OF POLICE,
MULANTHURUTHY.

2. STATE-REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI,. C.M. NAZAR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 08/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER IN CRL.M.P.NO.1449 OF 2003 IN CRL. APPEAL NO. 264 OF 2003.

DISMISSED

8.1.2007 Sd/-(K.THANKAPPAN, JUDGE)

K.THANKAPPAN, J.

CRL. APPEAL NO. 264 OF 2003

Dated this the 8th day of January, 2007

JUDGMENT

The appellant is the accused in Sessions Case No.240 of 2002 on the file of the Additional Sessions Court (Ad-hoc-II), Ernakulam. He faced trial for the offence punishable under Sections 452, 354, 506(ii) and 511 of Section 376 I.P.C.

2. The prosecution case against the appellant was that on 5.9.2000 at 10 a.m., the appellant trespassed into the house of PW.8, a girl aged 14, caught hold of her and attempted to commit rape on her. To prove the allegation, the prosecution examined PWs.1 to 10 and produced Exts.P1 to P13 and Mos.1 and 2. No oral or documentary evidence was adduced on the side of the defence. On closing the prosecution evidence, the appellant was questioned under Section 313 Cr.P.C. The appellant denied the allegations levelled against him and stated that the case was foisted against him. However, the trial court relying on the oral and documentary evidence adduced by the prosecution found the appellant guilty under Sections 452 and 354 I.P.C., convicted him thereunder and sentenced him to undergo rigorous imprisonment for a period of one year each for the

offences under Sections 452 and 354 I.P.C. and to pay a fine of Rs.2000/- for the offence under Section 452 I.P.C. and in default of payment of fine, to undergo simple imprisonment for a period of 2 months. The substantive sentences were ordered to run concurrently. The trial court also found that the prosecution failed to prove the charges under Sections 506(ii) and 511 of Section 376 I.P.C. Though the learned trial Judge had not acquitted the appellant of the above charges, it has to be presumed that the appellant was acquitted of those charges. The conviction and sentence ordered against the petitioner are challenged in this appeal.

3. This Court heard Sri.M.Retna Singh, learned senior counsel appearing for the appellant as well as the learned Public Prosecutor. The learned counsel for the appellant raised three contentions before this Court: (i) the trial court committed serious error in accepting the evidence of the prosecution witnesses to find the appellant guilty under Sections 452 and 354 Cr.P.C. as the entire evidence adduced by the prosecution is doubtful, (ii) the prosecution had not proved the entire case as the earlier versions of the witnesses were not produced before the court below and (iii) the evidence adduced by the prosecution is insufficient to hold that the appellant committed any offence at all. The leaned Public Prosecutor submits that the trial court considered the entire prosecution evidence and

rightly found the appellant guilty of the offences alleged against him.

4. The learned Public Prosecutor tried to establish the case against the appellant through the evidence of PWs.1, 2, 8 and 9. PW.1 is the mother of the victim. She was not an occurrence witness. She narrated the incident as spoken to by her daughter. PW.2 , a relative of the victim also deposed that PW.8 had disclosed to her about the incident . She is also not an occurrence witness. Her knowledge about the incident is what PW.8 had informed her. PW.3 was examined to prove Ext.P1 scene mahazar. PW.8 was the victim. She gave evidence to the effect that on 5.9.2000 while she was sitting in her room reading, the appellant entered the house, locked the front room and when she turned round she saw the appellant standing behind her naked. PW.8 further deposed that the appellant caught hold of her, pulled her towards him and tried to remove her skirt and blouse. This witness also stated that at that time she heard PW.9, her friend and neighbour, calling her whereupon the appellant immediately left the house. PW.8 further stated that she narrated the incident to her mother the next day and gave the First Information Statement to the police on 12.10.2000. Ext.P6 is the First Information Statement. PW.9, though examined as an occurrence witness, turned hostile to the prosecution and her evidence cannot be considered as corroborative to the version given

by PW.8. Exts.P8, P9 and P10 are the relevant portions of the statement given by PW.9 under Section 161 Cr.P.C.

5. PWs.5 and 6 were the doctors who examined PW.8. Ext.P2 is the medical certificate issued by PW.5 on 12.10.2000. PW.5 stated that she had examined PW.8 on 7.9.2000 on the basis of the requisition made by the police, but the victim was not willing for examination. This witness further stated that she examined PW.8 again on 19.10.2000 and she did not find any external injuries and that there was no area of specific tenderness. PW.5 also stated that the victim did not permit her to examine the private parts. Ext.P3 is another medical certificate issued by PW.5 in which she has stated that no opinion could be given as to any recent sexual intercourse. Ext.P4 is the medical certificate issued by PW.6 who had examined PW.8 on 30.10.2000 on the requisition made by the police. This witness also stated that there was no evidence of any external injury or recent sexual intercourse. PW.7 was the doctor who had examined the appellant on 14.11.2000 and had issued Ext.P5 potency certificate. PW.10 was the Sub Inspector of Police who had registered the crime against the appellant and prepared Ext.P6(a) First Information Report. This witness stated that he conducted investigation and registered the crime on the basis of the information given by PW.8. He also stated that the complaint

was received only on 12.10.2000. He did not give any explanation regarding the delay caused in filing the First Information Report.

6. The evidence of PWs.1, 2 and 8 would show that the alleged incident happened on 5.9.2000. PW.8 had stated that she had informed her parents the next day about the incident. PW.8 admitted that the complaint was filed before the police only on 12.10.2000, but the evidence of PW.5 would show that PW.8 was examined by her on 7.9.2000 on the basis of the requisition made by the police. The victim was again examined by PW.5 on 19.10.2000 and further examined by PW.6 on 30.10.2000. It is the admitted case of the prosecution that the complaint regarding the alleged incident was filed only on 12.10.2000. Ext.P6 would also prove that PW.8 had given the First Information Statement before the police only on 12.10.2000. The fact that PW.5 had examined PW.8 on 7.9.2000 would show that the police must have registered the case prior to 12.10.2000 and this fact was suppressed. Hence, it can be presumed that PWs.1, 2 and 8 who tried to establish the case against the appellant were not telling the truth. PW.8 also denied the suggestion that there was some dispute between her uncle and the appellant. In this context, the evidence of PW.9 is relevant. PW.9 was examined as an occurrence witness, but she denied having seen anything as alleged by the prosecution. She even

denied the suggestion that she was not telling the truth as she was afraid of the appellant. Further, it can be seen that the police tried to establish the case against the appellant under Section 511 of 376 I.P.C. by getting the victim examined twice by two doctors. But still, no evidence was adduced by the prosecution to prove such an allegation. That apart, even though PW.1 had stated before the court below that PW.8 had an injury on her lips, this fact was not spoken to by the doctors who had examined PW.8.

7. In the above circumstances, this Court is of the view that the finding of the trial court was not based on any legally acceptable evidence and that the prosecution failed to prove the case against the appellant beyond reasonable doubt. Hence, the appellant can be given the benefit of doubt. Accordingly, the conviction and sentence ordered against the appellant are set aside and the appellant is acquitted of the charges levelled against him. His bail bonds shall stand cancelled.

The Crl. Appeal is allowed as above.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.A. NO.264/2003

JUDGMENT

8TH JANUARY, 2006.